

REMARKS

In the Office Action mailed May 24, 2010, the Examiner rejected claims 18, 19, 30, 32-36, 39 and 42. By way of the foregoing amendments and the markings to show changes Applicant amended claim 42. Applicants believe that claims 18-19, 30, 32-44 are pending. The foregoing amendments are taken in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicant would otherwise be entitled in view of the prior art.

Further, by the present amendment, it does not follow that the amended claims have become so perfect in their description that no one could devise an equivalent. After amendment, as before, limitations in the ability to describe the present invention in language in the patent claims naturally prevent the Applicants from capturing every nuance of the invention or describing with complete precision the range of its novelty or every possible equivalent. See, Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., 62 USPQ2d 1705 (2002). Accordingly, the foregoing amendments are made specifically in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicants would otherwise be entitled.

I. Claim Rejections - 35 U.S.C. § 112, First Paragraph

The office action rejected claim 42 alleging that claim 42 is not supported by the original disclosure. Specifically, the office action alleged that "the first conveyor belt being raised and lowered" does not have support in the original disclosure. Applicants respectfully disagree with the allegations made in the office action. Applicants believe that support for this claim may be found in the specification of U.S. Patent Application Publication No. 2007/0214923.

Specifically, paragraph no. 0023 which states:

In a further preferred embodiment, the device comprises a belt, for example a conveyor or a portioning belt. With this belt, the shaped food product slices may be configured into a portion and/or conveyed away by the belt. The belt may assist the shaping means in shaping the food product slices. The belt may be raised and lowered, in order for example to produce food product stacks. Very particularly preferably, the position of the means for shaping the food product slices remains unchanged relative to this belt, i.e. there is a rigid connection between the means and the belt for at least some of the time. The change in position of the means for shaping the slices may then take place jointly with the portioning and/or conveyor belt. (Emphasis added)

Applicants believe that the above quoted paragraph provides adequate support for claim 42 and Applicants respectfully request that this rejection be withdrawn.

II. Claim Rejections – 35 U.S.C. § 112, Second Paragraph

The office action rejected claim 18, 19, 30, 32-36, 39, and 42 under 35 U.S.C. § 112, second paragraph for allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter, which Applicant regards as the invention. The office action rejected claim 18 for including “before the slices are piled up.” The office action appears to be alleging that this claim is not proper because the slices as shown in Fig. 2 are not compressed on the conveyor 2. The office action then goes on to say that “[t]he compression happens when the slices begin to pile up.” Applicants believe that this understanding is consistent with the language of the claim, which states, “compressing the front shaped slice and the rear shaped slice such that the shape of the front shaped slice and the rear shaped slice are changed relative to the shape of the food product slices before the slices are piled up.” Applicants believe that the claim as written is clear and particularly points out and distinctly claims the subject matter; thus, Applicants respectfully request that the rejection be withdrawn.

The office action rejected claim 42 alleging that “the process of stacking the slices is due to different speeds of the conveyor belts but not raising or lowering the first conveyor belt.” Applicants have amended claim 42 to clarify the claim. Applicants believe that the amendments to the claim render the rejection moot and respectfully request that the rejection be withdrawn.

III. Election/Restrictions

The office action alleges that adding a detecting means into claim 37 and its dependents creates “an invention distinct from and independent of the invention previously claimed.” Applicants traverse this assertion and believe that by adding step of detecting to claim 37 a distinct and independent invention has not been created from the invention previously claimed. Furthermore, the restriction on October 27, 2008 restricted a detecting means. Claim 37 does not include a detecting means. Claim 37 claims a step of “detecting at least one characteristic of the food product block to be sliced, a cut-off food product slice, or both.” Therefore, Applicants believe that the restriction requirement is improper and respectfully request that it be withdrawn and the claims examined.

IV. Claim Rejections – 35 U.S.C. § 103

The office action has failed to present facts as to where each and every element of the present invention is found in the references of record. The office action has not presented facts as to where every element of claim 18 is found in a reference of record. Specifically, the office action has not presented facts as to where, "compressing the front shaped slice and the rear shaped slice such that the shape of the front shaped slice and the rear shaped slice are changed relative to the shape of the food product slices before the slices are piled up" is found in the references of record. The office action has not presented any facts as to where claim 39 is found in the references of record. Claim 39 states, "wherein the first conveyor belt assists the product folder in folding each food product slice." The office action has failed to present any facts as to claim 42, which states, "wherein the first conveyor belt is raised and lowered to assist in piling up food product."


CONCLUSIONS

In view of Applicants' amendments and remarks, the Examiner's rejections are believed to be rendered moot. Accordingly, Applicants submit that the present application is in condition for allowance and requests that the Examiner pass the case to issue at the earliest convenience. Should the Examiner have any question or wish to further discuss this application, Applicant requests that the Examiner contact the undersigned at (248) 292-2920.

If for some reason Applicant has not requested a sufficient extension and/or have not paid a sufficient fee for this response and/or for the extension necessary to prevent the abandonment of this application, please consider this as a request for an extension for the required time period and/or authorization to charge our Deposit Account No. 50-1097 for any fee which may be due.

Respectfully submitted,

Dated: Aug 24, 2010



Daniel P. Aleksynas
Registration No. 62,551
DOBRUSIN & THENNISCH PC
29 W. Lawrence Street
Suite 210
Pontiac, MI 48342
(248) 292-2920

Customer No. 25215